Supreme Court, U.S.
FILED

(1)

No. 99 4286 SEP 7 1999

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

ROBERT WILLIAMSON PERDUE, Esq., **pro se**
Petitioner(s)

v.

ALLAN A. HUNTER, JR., M.D.

and

FREDERICK MEYERS, M.D.
Respondent(s)

On Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia

PETITION FOR WRIT OF CERTIORARI

ROBERT W. PERDUE, Esq., **pro se***
(admitted to practice Sct. Bar 12-20-71)
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* Counsel of Record

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ATPP

QUESTION(S) PRESENTED

1. May the Plaintiff in a civil suit be denied a trial on the merits by a bogus settlement allegedly entered into by Plaintiff's attorney and the attorneys for the Defendants and by the Trial Court judge claiming the settlement was agreed to by all parties in open court.

2. May the consent of the Plaintiff to such a bogus settlement be assumed by a reviewing court because the Trial Court judge did not question the Plaintiff regarding the settlement (see STATEMENT OF THE CASE, Hunter, Appendix C, and STATEMENT OF THE CASE, Meyers, Appendix D).

3. May the counsel state in open court that his client had agreed to a proposed settlement agreement when the client had adamantly and consistently told the counsel he did **not** agree, and should the statement of counsel be binding upon the client.

4. May a Trial Court judge state that a settlement agreement was reached before him in open court when such agreement had not yet been reduced to writing and the proposed terms of the agreement could not have been known by the Trial Court judge.

5. Can it be said that a client signed a court document when his counsel refused to let him read said document and profanely and sarcastically ordered the client to write his name "if he could remember it" on the bottom of the page.

LIST OF PARTIES

* [x] All parties appear in the caption of the case on the cover page.*

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

* All the parties to this case are listed in the caption thereof. There is no corporate party, parent, or subsidiary involved in this case.

TABLE OF CONTENTS

Opinions Below 1
Jurisdiction 2
Constitutional and Statutory Provision Involved ..... 3 (na)
Statement Of The Case 4
Reason For Granting The Writ 5
Conclusion 6

INDEX TO APPENDICES

APPENDIX A: A1 Grant Of Motion For Oral Argument
A2 Grant Of Date For Oral Argument
A3 Denial Of Appeal
A4 Denial Of Rehearing

APPENDIX B: SUMMARY OF EVENTS©
(prepared by Plaintiff's principal witness:
Patrick J. Hurley, son of Plaintiff©)

APPENDIX C: STATEMENT OF THE FACTS (Hunter, M.D.)

APPENDIX D: STATEMENT OF THE FACTS (Meyers, M.D.)

APPENDIX E: Proposed MOTION TO DISBURSE PROCEEDS OF SETTLEMENT and "to obtain closure to this case" (Vernick, counsel to Hunter)/transmittal letter, also from Vernick.

APPENDIX F: Proposed MOTION TO DISBURSE PROCEEDS OF SETTLEMENT; unsigned by trial court judge.

APPENDIX G: MOTION TO DISBURSE PROCEEDS OF SETTLEMENT; (Duplicate)

APPENDIX H: **Questionable ORDER(?)**:
Civil Action No. 95-809, Cal. No. 9 Judge Huvelle

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix ___ to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported;
[ ] or, is unpublished.

[x] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A3 to the petition and is

[ ] reported at _____or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the D.C. Court of Appeals court appears at Appendix A4 to the petition and is

[ ] reported at_____or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A- _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(a).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was **January 21, 1999.** A copy of that decision appears at Appendix **A3.**

[ ] A timely petition for rehearing was thereafter denied on the following date: **April 13, 1999, en banc** and a copy of the order denying rehearing appears at Appendix **A4.**

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

See Appendix B/SUMMARY OF EVENTS, Appendix C/STATEMENT OF THE FACTS - - Meyers, and Appendix D/ STATEMENT OF THE FACTS - - Hunter.

REASONS FOR GRANTING THE PETITION

The Court of Appeals showed in its Order and on oral argument prior to the Order that the Court was unaware that Plaintiff/Appellant had filed an Appeal within ten days of the trial judge's Order dismissing his complaint and, further, that the District of Columbia Court of Appeals was not aware that, during the proceedings on February 3, 1997, at no time did the Trial Court judge question the Plaintiff whether or not he knew of the alleged settlement agreement or whether he agreed thereto. At no time did Judge Canan ever ask Plaintiff a question (this absence is clearly shown by these transcript of records).

The action of the Trial Court judge in not questioning the Plaintiff regarding the bogus settlement agreement departed from the accepted and usual course of judicial proceedings and the Trial Court judge's malfeasance in this regard was sanctioned by the District of Columbia Court of Appeals. Such lack of judicial procedures calls for an exercise of this court's supervisory power so as to ensure the propriety of judicial proceedings in the courts of the District of Columbia, and the proper administration of justice in the District of Columbia.

Appendix A1

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 97-CV-1028
CA809-95

ROBERT W. PERDUE,
Appellant,

v.

ALLAN A. HUNTER, JR., ET AL.,
Appellees,

[stamp - FILED; JAN 5 1999; signed by Garland Pinkston, Jr., Clerk of the Court]

ORDER

On consideration of appellant's request to present argument on summary calendar, and it appearing that this matter is scheduled on the Summary Calendar of January 14, 1999, it is ORDERED on behalf of the merits division assigned to consider this appeal that the motion is granted. The parties are to be present in the District of Columbia Court of Appeals courtroom, located on the sixth floor, at 1:55 p.m. on that date.

Copies to:
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odd

A2

D.C. COURT OF APPEALS
500 INDIANA AVE., N.W. 6TH FLOOR
WASHINGTON, D.C. 20001

No. 97-CV-001028

CALENDAR NOTICE

Caption: ROBERT W. PERDUE
v.
ALLAN A. HUNTER, JR., ET AL.

Dated and Stamped: 12/02/98

Set fourth: SUMMARY I CALENDAR ON
JANUARY 14 1999 AT 2:00 P.M.

THIS NOTICE IS BEING SENT TO
COUNSEL FOR ALL PARTIES

REGULAR CALENDAR

Argument on the regular calendar is thirty (30) minutes per side.

Council desiring to submit without argument must file a motion. Counsel shall appear at the scheduled time unless notified by the Clerk that the court is willing to have the case submitted without argument.

If you wish to examine the appeal record file in the Clerk's Office, you must arrange to do so by calling the Clerk's Office at least seven (7) days in advance of the date you wish to inspect the record. This procedure is necessary as the records and briefs will have been sent to the assigned judge and will not be available until the date of argument.

SUMMARY CALENDAR

Cases on the summary calendar are not automatically argued.

Under D.C. App. R. 34 (b), counsel, or a party proceeding without counsel, desiring to present argument, **must request permission in**

writing within ten days of this calendar notice. Unless permission is granted by the court, or the court on its own motion notifies counsel to appear for argument, the case may be submitted at the expiration of that ten day period and decision may issue at any time thereafter.

If granted, argument in a summary case will be held on the date and time indicated, on the notice. Argument is limited to 15 minutes per side.

DISTRICT OF COLUMBIA COURT OF APPEALS

[stamp-FILED; JAN 21 1999; signed by GARLAND PINKSTON, JR., CLERK OF THE COURT]

No. 97-CV-1028
CA809-95

ROBERT W. PERDUE,
Appellant,

v.

ALLAN A. HUNTER, et.al.,
Appellee.

Appeal from the Superior Court
of the District of Columbia
(Hon. Russell F. Canan, Trial Judge)

Argued January 14 1999; Decided January 21 1999; Before Schwelb, Ruiz and Reid, *Associate Judges.*

MEMORANDUM OPINION AND JUDGEMENT

Appellant Robert W. Perdue appeals from an order of the trial court denying his *pro se* Motion for Vacation of Order, Dismissing Complaint, Reinstatement of Complaint and To Set Case for Trial Date. We affirm.

FACTUAL SUMMARY

On January 22, 1995, Mr. Perdue filed a civil suit against Drs. Allan A. Hunter and Frederick Meyers, alleging that the doctors were negligent in the medical care that they rendered to him. The case was scheduled for trial on February 3, 1997. On that date, however, Mr. Perdue's counsel informed the trial court that a settlement agreement had been reached between the parties. As a result, Mr. Perdue, his counsel and defense counsel executed a settlement Praecipe in open court. The trial court also approved the settlement in open court.

On April 23, 1997, Mr. Perdue, proceeding *pro se*, filed a motion to vacate the order dismissing his initial complaint and to reinstate his claim. The trial court denied his motion on May 22, 1997, stating that "the unsupported conclusory statement by plaintiff in his motion are not legally sufficient to warrant the relief requested."

ANALYSIS

According to a letter dated April 18, 1997, which Mr. Perdue sent to the trial judge, he did not read the settlement Praecipe until February 5, 1997. He acknowledged being informed by his counsel that he had "ten days from the entering of the order" to file a motion to vacate, and that his "time limit [was] up COB today [, February 13, 1997]."[1] Despite being told that his motion was due on February 13, Mr. Perdue did not file it until April 18, 1997. In his April 18 letter to the trial judge, Mr. Perdue stated: "I realize my motion is not being filed within the ten days prescribed by the rules of the Superior Court."

Mr. Perdue's motion does not identify the rule under which he filed it. However, we regard it as a motion under Super. Ct. Civ. R. 60.[2] In his motion, Mr. Perdue claimed that, "no settlement agreement had been reached or signed or signed and no amount of monies had been agreed upon." He also averred that he "signed [the] Praecipe without having been given an opportunity to read it."

The trial court's order of May 22, 1997, denying Mr. Perdue motion to vacate specifically stated that: "There is no dispute that a settlement was reached, signed and approved in open court and that defendants did nothing to mislead plaintiff into signing the agreement. Further, it appears that defendants have complied with all terms of the settle-

ment." In addition, the court noted that Mr. Perdue did not follow the procedural requirements of Super. Ct. Civ. R. 12-I (a) and R.5 (a) before filing his motion and that he "is an active member of the bar and should be held.

Super. Ct. Civ. R. 59 (e) requires that a motion to alter or amend judgement be filed within ten days of the entry of judgement.

[2] Rule 60 provides in pertinent part:

(a)...Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

(b) ...On motion and upon such terms at are just, the Court may relieve party...from a final judgement, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under 59 (b); (3) fraud... misrepresentation or other misconduct of an adverse party.

accountable for following all appropriate court rules." [3] Mr. Perdue filed a motion for reconsideration on June 13, 1997, which was denied on the ground that no new arguments were raised in the reconsideration motion.

Mr. Perdue contends that settlement discussions between his attorney and opposing counsel occurred without his knowledge, resulting in an agreement that was allegedly never shown to him. He also claims that his attorney ordered him to sign the settlement Praecipe in open court "without [giving him] any explanation whatsoever." Although Mr. Perdue may conceivably have complaints against his attorney concerning the attorney's legal representation in this matter, he alleges no wrongdoing by Drs. Hunter and Meyers with regards to the settlement agreement. Moreover, Mr. Perdue's assertion that he was unaware of the settlement agreement is not only unsupported, but also completely contrary to the record. Indeed, the record not only indicates that Mr. Perdue was present when his counsel announced to the trial court that "[w]e have reached a settlement in the matter for $400,000"; but also that he executed in open court a settlement Praecipe relinguishing all claims against the doctors. Thus, we agree with the trial court that " [t] here is no dispute that a settlement was reached, signed and approved in open court that a settlement was reached, signed and approved in open court and that defendants did nothing to mislead plaintiff into signing the agreement." Settlement agreements " bar [] the right to recovery on any claim included therein" and " ought not to be lightly set aside." *Brown v. Hornstein,* 669 A.2d 139, 142 (D.C. 1996). Since Mr. Perdue has made no adequate showing under Rule 60 (b) of "[m]istake, inadvertence, surprise, or excusable neglect," or exceptional circumstances such as newly discovered evidence or fraud; and has not identified any clerical mistake under Rule 60 (a), we conclude that he is not entitled to relief under Rule 60. *See Clement v. Dep't of Hu-*

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[3] Later, in the trial court's order denying the motion to recondsider, the trial court correctly noted that Mr. Perdue was no longer an active member of the bar.

man Servs., 629 A.2d 1215, 1218 (C.C. 1993) (Rule 60 (a) "applies only to errors that are clerical or arise from oversight or omission"); *Johnson v. Marcheta Investors Ltd. Partnership, et al.*, 711 A.2d 109, 112 (D.C. 1998) (Rule 60 (b) affords postjudgement relief only under extraordinary and compelling circumstances).

Accordingly, for the foregoing reasons, we affirm the trial court's decision.

So ordered.

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DISTRICT OF COLUMBIA
COURT OF APPEALS

[stamp - FILED and SIGNED; APRIL 13 1999

No. 97-CV-1028
CA809-95

ROBERT W. PERDUE,
Appellant,

v.

ALLAN A. HUNTER, JR., ET AL
Appellees.

BEFORE: Wagner, chief Judge; Terry, **Steadman, *Schwelb, Farrell, *Ruiz, and *Reid, Associate Judges.

ORDER

On consideration of appellant's petition for rehearing or rehearing en banc, it is...

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

**Associate Judge Steadman has recused himself form this case.

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B1

SUMMARY OF EVENTS©

On January 24, 1992, I, Robert Perdue, drove from Arlington, Virginia, to Grantsville, Maryland, a distance of 166 miles. I wore amber glasses due to having previous eye disorders. These glasses fit over my prescription glasses and were given to me three weeks before by Dr. Allan Hunter, M.D. While driving on the night of January 24th, oncoming headlights were the usual problem. Dr. Hunter had asked me not to drive without the amber glasses and also not to fly my airplane without them. After the usual drive to Garrett county (no snow on road), I went to bed without any headache that I recall. I took the usual aspirin. Flashes of light continued throughout the day. In the evening we attended Mass. After Mass I drove to the local Grantsville Holiday Inn. When I ordered, I realized that I could not read the menu and, after being served, I became very sick. As we drove back from the restaurant, Patrick asked, "Do you want to rent a movie [traditional event]?" I said, "No." I wanted to get back home to get a bottle of Advil from my golf jacket. (Dr. Fred Meyers had told me to carry a bottle of Advil for my left elbow, which was sore.) Because I was getting a headache, no movie desired! I drove back on customary "back roads." The headlight problem recurred. I took Advil and went to bed. Before falling asleep I saw flashes of light. My headache was dull.

Sunday morning, January 26, 1992, I awoke at the usual time, made coffee, and went to Patrick's house with a headache. Patrick commented that I looked bad (remembering the drive up from the Virginia apartment; and the dinner experience the night before), and that he had a feeling, or premonition, that something serious was about to unfold. The afternoon of the 26th, I did not go hunting with the beagles. I had a headache, and my stomach was queasy by now. Early in the evening I drove over to Mr. Lively's house. I never sat down and stood by the front window, holding my head and saying; "Patrick, I have to go! My head hurts in the worst way!" I said that I would take the Blazer to Arlington that night. Patrick took the 85 Cadillac to Gnegy's Olds Cadillac for body and windshield work. Patrick was back approximately 8:00 p.m. Monday evening. I drove back, headlights still a problem, and I was still wearing the amber glasses. I picked up an overnight pass for the Blazer at the front desk and parked the rig safely in the proper place. (Individual dials on the instrument panel of a Blazer are

difficult to read.) I took the usual aspirin and went to bed. I did not think it was necessary to call Dr. Fred Meyers at this time.

On January 25, 1992, in Grantsville, Maryland, it had snowed one foot overnight. It was a brilliant sunlit day and the reflection off the snow was intense. Even though I wore sunglasses, it took half an hour to recover from the snowblindness. At this time nausea began, and flashes of light continued all day.

January 26, 1992, Arlington, Virginia apartment 1005 N. I followed the usual routine, showered, shaved, and planned breakfast at the Hyatt Regency with Bill Hoatson and Fred Peters. Before this I had attended the Texas Eastern Transmission (TETCO) Rate Conference for Texas Gas with Dave Roberts of Texas Gas, Owensborough, Kentucky. Fred Peters paid for my breakfast but I was nauseated and could not eat. I returned to the office at approximately 9:00 - 9:30 a.m. Sonya asked me, "Did you eat breakfast?" I said no, I was too sick to eat breakfast. She told me I should go to bed. I told her all about the trouble with my eyes. Sonya said, "Why don't you go see Dr. Allan Hunter?" I asked Sonya to call Dr. Hunter and tell him I'm on the way to his office. I walked from Andrews & Kurth, 1701 Pennsylvania Avenue, to 1145 19th Street, Dr. Hunter's office, at lunch time. Dr. Hunter's assistant, Filipino (the one who checks your eyes against the old and new lens prescription after it has been filled), took me into the examining room after work up. Dr. Hunter came in and said, "You don't need me. Miss [so & so] found you 20/20 this morning." Then he personally looked at my eyes with a small flashlight. Hunter said, ,"Where did **this** come from?" I asked, "What?" Hunter said, "Didn't you shave this morning?" "Yes," I replied. Dr. Hunter said, "You could not have missed seeing this!" I asked, "What?" again. Dr. Hunter stated that I had a big vein sticking out there. He then traced the vein with his finger along my forehead. The vein travelled up the center of my forehead. Dr. Hunter said; "that there was no way I could have missed it a couple of days ago (three weeks earlier) if it had been there." My FAA physical exam was to come up at the end of January. I also had been active in flying my airplane three weeks prior to the stroke, recorded in my log book with a new instrument instructor on board. I passed my FAA instrument written exam in December. Dr. Hunter continued to say, "You must promise me to have a blood sediment test made before tomorrow morning, Mr. Perdue. I cannot overstress: you **must** have Dr.

Meyers complete a blood sediment test before tomorrow morning!" Dr. Hunter asked me to call Dr. Meyers as soon as possible and tell him it was imperative for Dr. Hunter to have the results before Tuesday morning at 8:30 - 9:30 a.m. I went back to my office at Andrews & Kurth and telephoned Dr. Meyers and told him what Dr. Hunter had said. Dr. Meyers said, "No problem. Come over right now." I walked over. Dr. Meyers' nurse (Spanish) took my blood. I told Dr. Meyers that Dr. Hunter was worried about the vein in my forehead. Dr. Meyers looked at my forehead, but I have no recollection of any remarks whatsoever. I then went to Crystal City, Apartment 1005 N. Patrick came in about 8:00 p.m. A brief discussion of the day followed. I had, by then, the headache of "Lizzy Borden" (migraine). My stomach required Pepto-Bismol. I have no recollection of eating an evening meal. The vein in my forehead was still prominent and remained so for several days thereafter. The vein on the side of my head was very prominent with a magenta cast surrounding the ring of blue vein. I was still ambulatory but very sick, like a dog that has eaten something bad. I took an Advil and went to bed. I took Mylanta II and aspirin then went to bed again. I had commented that I would see Patrick in the morning before he left for class.

I awoke, gave Patrick a cup of coffee about 7:30 a.m., and asked him a couple of general questions. I told him that I was going to Dr. Meyer's office to see if he had the results of the blood sediment test; I would be back before he went to class. I then visited Dr. Meyers' office and received the results to give them to Dr. Hunter. Dr. Hunter stated that Dr. Meyers' had phoned with all the results of the test; he made no comment. Dr. Meyers then listened to my lungs and took my blood pressure, but never noticed the vein on my forehead and didn't comment on the migraine or make inquiry as to the vein on the side of my head. The stomach problems, etc., were all discussed and no comment made. My shoes had been on the wrong feet but he made no comment about anything, only for me to go home at 9:50 a.m. This is when Patrick saw that my shoes were on the wrong feet. I hadn't noticed this, and it took Patrick several tries at explaining before I realized it. Patrick was shocked that Dr. Meyers had not noticed or said anything about my shoes. Patrick returned from class at 4:00 p.m. and found a message on the answering machine from Dr. Hunter: "Please be in my office Wednesday morning early, as soon as possible, and

phone me as soon as possible." Also, a message was left at the front desk by Dr. Hunter: "It is imperative that you be here without delay." I tried to call Dr. Hunter but I dropped the telephone. Hunter's voice faded away. I seemed to be losing strength in my whole left side, yet my voice was strong. My stomach was very upset and I asked Patrick for Mylanta II. I tried to drink some but I dropped the bottle all over the floor. I stated that I would get an orderly from Dr. Meyers' office to get me to Dr. Hunter's office by Wednesday morning. Patrick told me that I was too sick, and I stated that, "if I have to crawl I will be there." I lay down and took a nap. Patrick came into my room at 6:30p. m. and found me lying on the floor in a pile at the foot of my bed. Patrick lifted me onto the bed with great difficulty, then phoned Dr. Meyers and got the answering service. Dr. Meyers returned the call **(he seemed somewhat put out)**. Patrick conveyed to Dr. Meyers that I was very sick and described my symptoms. Dr. Meyers said, **"Please phone 9-1-l! I will not repeat! Send him to the emergency room! I'm on my way immediately!"** Patrick phoned 9-1-1 and they came immediately. Patrick spoke to them. They felt that I might be a stroke victim. The crew chief of the emergency unit told Patrick, "that I may not make it to GW emergency room." I was unconscious through the whole event. Emergency unit transported me to National Hospital For Orthodedic & Rehabilitation, due to that facility being the closer one. I was admitted to National Orthopedic on January 28, 1992 early in the evening. The MRI scan was given at 11:00 p.m. and another scan was given 48 hours later. Dr. Meyers phoned in at least twice during the evening(Hospital records indicate Dr. Meyers called at 8:17 p.m. and 10:17p.m.), and spoke with the attending physician: (Dr. Shoe Chuck) (sp.) Dr. Hunter phoned the following day letting Patrick know that he knew what had taken place. I was in National Orthopedic from January 28, 1992, to March 27, 1992. On March 27, 1992, I was transferred and admitted to Manor Care Nursing Home in Arlington, Virginia. It took four months to stabilize my condition. Patrick was in Dr. Meyers' office on several occasions during March for his own concerns, and nothing was said about my condition. Dr. Meyers avoided Patrick. He then, on March 27th, called Patrick and asked, "Where is Bob?" Dr. Meyers showed up at Manor Care on March 29th and acted real folksy, calling me "buddy" and "pal" throughout the conversation. Then I received a bill from Dr. Meyers' office for $290.00 for his

ited at the nursing home... I stayed at Manor Care until July 31, 1992. My 71st birthday was July 29, 1992. The following day, July 30, I was in Bankruptcy Court with Patrick and Howard Hardesty and Tammie Curran of Andrews & Kurth. A Mr. Bartel represented me in the proceeding. The reason I left Manor Care Nursing Home was that my insurance policy ran dry at the end of four months (American Express Optima Home Health Care of Fireman's Fund). Tammie Curran has all this information (1-202/662-2714). Sonya Lehmer (my secretary), has a lot of information on bills and insurance information (1-202/662-2785). On July 31st I went home to 1005 N. Crystal Plaza, on Jefferson Davis Highway, Arlington, Virginia. In August, Tammie Curran hired Gary Lively and his wife to handle my financial affairs, and they gradually took over more and more authority. On November 23rd I was transported to my home in Garrett County after the last doctor's visit with Dr. Desoza, M.D. (1-703/751-5350). Presently I am still at the Grantsville address in Garrett County, Maryland, where I have 24-hour nursing care. (Patrick provides my health care.) The treating physician at National Orthopedic told me I had stabilized and that Dr. Meyers had sent in a letter stating that I had had bronchial pneumonia for eighteen months prior to the night of the stroke. I had an extensive, complete physical six months prior to the stroke for insurance purposes required by my law firm which cost me $575.00 and "Dr. Meyers, M.D." told me I had a clean bill of health. Dr. Hunter also visited me at Manor Care to check my field of vision, though he didn't have any instruments other than a ballpoint pen. Dr. Hunter's bill is on record.

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#1-202/466-3550

x Patrick J. Kurley ©

MEMO

I spoke with Sonya Lehmer on 2-2-93. She conveyed to me that in her recent trip to Dr. Hunter's office for her personal check-up, she and Dr. Hunter had a conversation concerning the day I had gone to see Dr. Hunter — the day prior to my stroke. Sonya informed me that Dr. Hunter told her that

"he knew that I was in an onset of a stroke because of my slurred speech, headache, and the flashes of light, but there wasn't anything he could do about it and didn't believe there was anything Dr. Meyers could do, either, until a cat scan was performed at GW. So he sent me home!"

x Robert W. Kerdue

Appendix C

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 97-CV-1028

ROBERT WILLIAMSON PERDUE, Esq.
(D.C. Bar #354308), pro se
Appellant,

v.

ALLAN A. HUNTER, M.D., et al

and

FREDERICK MEYERS, M.D.,
Appellees.

On Appeal from the Superior Court of the
District of Columbia
Civil
No. CA000809-95/Calendar 9

ANSWERING BRIEF FOR APPELLANT

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Appendix C

TABLE OF CONTENTS

PAGE

STATEMENT OF THE CASE 1

ARGUMENT 2

CONCLUSION 3

STATEMENT OF THE CASE - MEYERS, M.D.

For a true and correct statement of the case, references made to page 1 of Appellant's brief filed in this matter on June 1, 1998, Appellant is of the opinion that the statement of the case on page 2 of the brief for Appellee, Frederick Meyers, M.D., is needlessly superfluous and misleading.

In his statement of the facts contained on page 3 of the brief filed for Appellee, Frederick Meyers, M.D., counsel for Dr. Meyers makes a misstatement of facts, i.e., that Dr. Meyers denied that he ever saw or spoke with Mr. Perdue on either January 27 or 28, 1992. Such a statement is certainly not a fact. Counsel for the defendant, Meyers, made this misstatement in the form of interrogatories when he deposed plaintiff at the office of plaintiff's counsel in Washington, D.C., on December 13, 1995. A transcript of that deposition was made an exhibit before this court in Appellant's Designation of Record filed on August 30, 1997. During this deposition, Appellant advised counsel for Appellee, Dr. Meyers, that he had been billed for his visits with Dr. Meyers on both January 27 and January 28, 1992, and that plaintiff had paid both bills by checks mailed to and received and deposited by Dr. Meyers. When counsel for Appellee, Dr. Meyers, asked if he could obtain copies of said checks, they were made available to him (Appellant's deposition was not only transcribed by a court reporter, it was videotaped, as well) and the matter of the checks being made available to counsel of Appellee, Frederick Meyers, M.D., is recorded on the videotape.

Without overemphasizing the fact, the contention of Dr. Meyers that he did not see plaintiff or speak with him on January 27 and January 28, 1992, is the important key to understanding each of the defendants' deportment or conduct in this case and is the underlying basis in Meyers' and Heffler's [illegible]rvor in claiming that they had settled the case with plaintiff on February 3, 1997. Because counsel for Dr. Frederick Meyers knows that if plaintiff can prove (and **has** proved) that Dr. Meyers did in fact see and speak with plaintiff on January 27 and 28, 1992, their whole defense and their fraudulent claim of settlement collapses like a house of cards.

In that portion of the brief for Dr. Meyers entitled ARGUMENT (page 2), counsel for defendant, Dr. Meyers, continues to insist misstatements in his argument. Counsel states that "the settlement agree-

ment was presented by plaintiff's counsel in open court, in the presence of the plaintiff." The truth of the matter is that **there is no settlement agreement and never has been in this case!** It is impossible and misleading for defendant Meyers' counsel to state that a settlement agreement was presented in open court when **no settlement agreement in fact exists.**

ARGUMENT

The truth is that plaintiff has never signed or seen an executed settlement agreement, release, or payment of a structured settlement in this case, and offers to the Court the supported allegation that no such agreement, release, or indemnification exists. Plaintiff did not object in open court to the Praecipe because **he had not been shown that document or been given the opportunity to read the same.** Plaintiff did **not** consent to the settlement and dismissal of the complaint; in fact, plaintiff had advised his counsel prior to appearing in open court that **he would** not agree to any settlement of his action against the defendants. It is to be noted in the Transcript of Record of the proceeding on February 3, 1997, offered by defendants as an exhibit to Appellee's respective briefs, at no time did the judge or any counsel for the parties ask plaintiff if he agreed with the purported settlement agreement. As stated in Appellant's initial brief in this matter, he first learned of the language of the Praecipe when he was taken, on February 6, 1997, to the Clerk of Court's office and was shown a copy of the Praecipe for the first time.

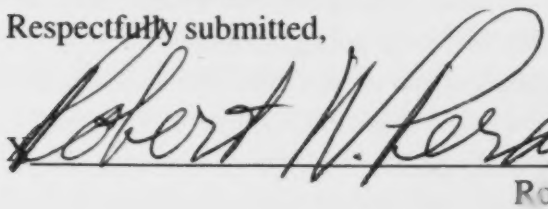
The remainder of the brief for Appellee, Frederick Meyers, M.D., filed in this proceeding, rests upon the basis that a valid settlement agreement between all the parties exists and, in fact, was agreed to by Appellant. That basis is, of course, fallacious. **No valid settlement executed by the parties exists and is in being.** Counsel for Appellee, Frederick Meyers, states in the course of his brief that a draft of the settlement agreement was forwarded to plaintiff [page 3, (Exhibit D.)]. It is submitted that Exhibit D to Appellee's brief for Frederick Meyers, M.D., is not a draft of a settlement agreement and it could not be found by the Court to be a valid, binding agreement. Exhibit D, in fact, is a copy of opposition filed by counsel for the defendant, Frederick Meyers, to plaintiff's motion to vacate the Praecipe (received by the Clerk of Court's office, Superior Court, District of Columbia, May 21, 1997).

Throughout his brief, counsel for Frederick Meyers, M.D., insists that Appellant/plaintiff filed a motion to vacate the purported settlement in this proceeding. That is a misleading and fallacious assumption. Appellant did **not** file a motion to vacate the purported settlement agreement in this proceedings Appellant's motion filed on April 24, 1997, is clear in that it requests Judge Canan to vacate the Praecipe, **not** a settlement agreement, and was based on the fact that plaintiff's counsel deliberately withheld the contents of the Praecipe from plaintiff and deliberately did not permit plaintiff to read the Praecipe, but insisted by shouting at plaintiff that plaintiff write his name at the bottom of the piece of paper he was waving in plaintiff's face. Plaintiff asked his counsel, Mr. Donahoe, "Sign what? Am I supposed to sign it 'Robert W. Perdue', or what?" Then Mr. Donahoe shouted, "Write " Robert Perdue I at the bottom of that page, damn it! Don't you know your own name?"

CONCLUSION

No valid settlement was ever reached in this case, and a copy of no executed settlement agreement has ever been presented to this court, nor to the trial court below, because **no such agreement exists.** Appellees have offered no basis for finding that such an illusory settlement agreement exists or has, in fact, ever existed. The plaintiff's counsel, Keith W. Donahoe, Esq., deliberately concealed from plaintiff the Praecipe which was entered by Judge Canan in this proceeding, and said Praecipe should have been vacated in accordance with plaintiffs/ Appellant's motion to vacate filed on April 24, 1997. Therefore, the decision of the Trial Court should be reversed and this case should be remanded for expedited trial.

Respectfully submitted,



Robert Williamson Perdue, Esq.
(D.C. Bar #3544308), pro se
1015 Sherman Hare Road
Grantsville, Maryland 21536
1-301-895-5981

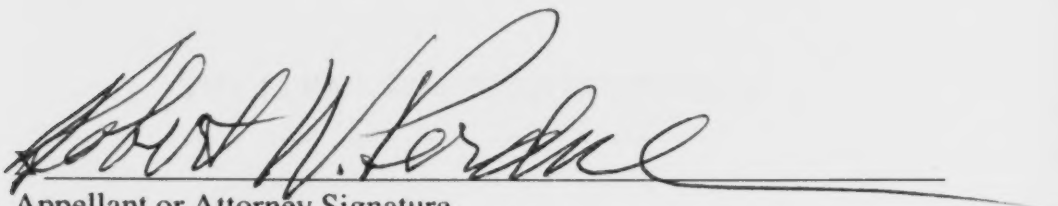
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were mailed, postage prepaid, on this 7th day of July, 1998, to the Appellee's attorneys at the following addresses:

Andrew E. Vernick, Esq.
104 West Street
P.O. Box 551 Annapolis, Maryland 21404
(410) 263-5900
Attorney for Defendant, Hunter

James M. Heffler, Esq.
200-A Monroe Street, Suite 310
Rockville, Maryland 20850
(301) 340-1140
Attorney for Defendant, Meyers

Also five copies of the same to Garland Pinkston, Jr., Clerk of the District of Columbia of Appeals, Room 6000, 500 Indiana Avenue, NW, Washington, D.C.



Appellant or Attorney Signature

Robert W. Perdue
(D.C. Bar #354308), pro se
1015 Sherman Hare Road
Grantsville, Maryland 21536
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Appendix D

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 97-CV-1028

ROBERT WILLIAMSON PERDUE, Esq.
(D.C. Bar #354308), pro se
Appellant,

v.

ALLAN A. HUNTER, M.D., et al

and

FREDERICK MEYERS, M.D.,
Appellees.

On Appeal from the Superior Court of the
District of Columbia
Civil
No. CA000809-95/Calendar 9

ANSWERING BRIEF FOR APPELLANT

ROBERT WILLIAMSON PERDUE, Esq.
(D.C. Bar #354308), pro se
1015 Sherman Hare Road
Grantsville, Maryland 21536
1-301/895-5981

Appendix D

TABLE OF CONTENTS

PAGE

STATEMENT OF THE CASE 1

ARGUMENT 1

CONCLUSION 4

CERTIFICATE OF SERVICE 5

STATEMENT OF THE CASE - HUNTER, JR., M.D.

In the brief for Appellee, Allan A. Hunter, Jr., M.D., counsel for Dr. Hunter states on page i of the brief that Keith Donahoe of Koonz, McKenney, Johnson, DePaolis and Lightfoot was counsel for Appellant, Robert W. Perdue, "to represent him . . . throughout the discovery period, settlement discussions and ultimate settlement of this case." **That is a misleading statement.** At no time did Appellant appear at any settlement discussions with Mr. Donahoe as his counsel. In fact, to Appellant's knowledge, no such settlement discussions were ever held in this case. If such discussions **were** held, and Mr. Donahoe appeared at the same, he never disclosed such a fact to Appellant.

The attorneys for Appellee, Allan A. Hunter, Jr., M.D., go on to state in their brief **(pp.** i-ii) that "Mr. Perdue now seeks to avoid his obligations under that agreement. Here, again, attorneys are referring to some illusory agreement which they, and only they, know exists. **No such agreement has ever been shown to any party in this proceeding or to this court.** If such a full and binding settlement **does** exist, where is it?

ARGUMENT

In their brief, attorneys state that "Appellees, through their counsel, negotiated with Mr. Perdue's counsel in good faith toward a fair, negotiated and final settlement of all claims asserted in the Complaint (p. ii)." They further assert (p. ii) that "such a settlement was achieved, as was announced by Mr. Perdue's counsel in open court (without any objection from Mr. Perdue who is himself an attorney), and evidenced by Mr. Perdue's signature on the Praecipe filed in open court on February 3, 1997."

On page v of the brief for Appellee, Allan A. Hunter, Jr., M.D., his attorneys state that the Statement Of Issue Presented is "Whether the trial court erred in denying Appellant's [sic] motion to vacate the settlement and dismissal of this case." **This is a fallacious statement of the issue presented.** Appellant's motion speaks for itself, but it was not to vacate the bogus settlement and reinstate Appellant's case. Appellee's attorneys make much of the fact that Appellant is an attorney at law. It is assumed that Appellee's attorneys are also competent attorneys at law and members of the Bar and should be able to read and understand a valid motion when one is put before them.

In the Statement Of The Case on page 1 of the brief for Appellee, Allan A. Hunter, Jr., M.D., attorneys state that "settlement discussions, which had been ongoing for several weeks, resumed . . ." As stated above, Appellant knew nothing of such discussions, and therefore was not informed or present at any such discussions. Additionally, attorneys continue to assert that Appellant sought to vacate the purported settlement. Once again, they point to the fact that Appellant is an attorney at law. This has been dealt with above.

In regard to the Statement Of The Facts contained on page 2, Appellant does not dispute that defense counsel engaged in settlement discussions with Keith Donahoe in a good faith effort; however, Appellant does assert that **such discussions were without his knowledge, presence, or approval.** Early in the last week of January, 1997, Mr. Donahoe telephoned Appellant and his son, Patrick, and asked them to meet with him in his office at 10:00 a.m. on, Saturday, February 1. At this meeting, Mr. Donahoe first advised Appellant and his son that he had been negotiating with Mr. Vernick toward a settlement with Dr. Hunter for some time, but Dr. Meyers had steadfastly refused to permit his counsel to take part in the negotiations, maintaining the position he took at the pretrial conference on August 26, 1996. However, Mr. Donahoe said that late in the evening the night before our meeting, Dr. Meyers had capitulated and ordered his attorney to take part in the negotiations. Consequently, Vernick advised Donahoe that he expected to have a firm offer of settlement on Monday morning. Donahoe told Appellant and his son to be ready to receive a new offer from the defendant's counsel on Monday morning and that we would meet at 9:00 a.m. at the courthouse on Monday morning.

As to what ensued on February 3 in open court, Appellant makes reference to his brief filed on June 1, 1998, in this proceeding. Attorneys for Appellee, Dr. Hunter, go on to state that "at no time did Mr. Perdue indicate to the court or anyone that he was dissatisfied with the fact or terms of the settlement." **That is not a true statement of fact.** Mr. Perdue made very clear to Mr. Donahoe that Mr. Perdue found Mr. Donahoe's conduct in not disclosing the contents of the Praecipe to be reprehensible, unethical, and worthy of being called to the attention of the D.C. Bar, Grievance Committee Bar Counsel.

On page 2 of their convoluted Statement Of The Facts, attorneys again misstate the purpose and content of Appellant's motion filed on

April 24, 1997.

On page 3 of the brief in their Statement Of The Facts, attorneys for Appellee, Hunter, again state that the settlement agreement was signed in open court. Appellant has pointed out several times that no **signed settlement agreement in fact exists,** and that attorneys for Appellee have failed to produce such a document.

On page 3 of the brief for defendant Hunter, his attorneys state the Appellant's silence throughout the proceedings on February 3, 1997, indicates his "consent" to Mr. Donahoe's conduct and behavior. It is an established rule of law that **silence does not lend** or give consent. At no time during the proceedings on February 3 did the trial judge (Russell F. Canan) ask Appellant whether or not he agreed to the purported settlement, and at no time did counsel for the Appellees question Mr. Perdue about the alleged settlement or its provisions. Again, Appellant states that in his knowledge and belief there is no existing settlement agreement, medical waiver, or agreement to a structured payout. Appellant has never released defendants or any claims against their negligent conduct.

On page 5 of their brief, attorneys for Appellee state that "the defendants have honored their obligations under the settlement and tendered the initial payment [a check for $275,000] to plaintiff's counsel, Keith Donahoe, prior to his withdrawal as counsel for Mr. Perdue." Appellant knows this to be true because Messrs. Koonz and Donahoe appeared, uninvited, at Appellant's residence on April 16, 1997, and requested Mr. Perdue to endorse said long-held check from defendant's insurance carrier that the firm could negotiate the check to their account. Messrs. Koonz and Donahoe offered Mr. Perdue a check for $15,000 if he would do so. Appellant refused to endorse the check. Additionally, Appellant has received unsolicited checks from time to time from a financial institution in the state of Kentucky (Shared Financial Services/Escheat Processing & Reporting), but has not endorsed or negotiated or deposited any such checks to his account and does not intend to do so.

As to the balance of their argument on page 5 of their brief, Appellant believes that he has answered any misstatements attorneys have made regarding the existence of a settlement agreement or Appellant's silence during the proceedings of February 3, 1997.

CONCLUSION

The facts of this case as set forth by Appellant in his initial brief filed in this proceeding and clarified in this instant brief clearly show that the plaintiffs/Appellant's motion to vacate the Praecipe, to reinstate his cause of action and complaint against defendants Hunter and Meyers should have been granted by the trial court judge, and that his order denying plaintiff's motion should be reversed in toto, the plaintiff's case reinstated, a new trial judge appointed, and an early date set for trial of the case herein.

Respectfully submitted,

W. Bert Williamson Pitcher, Jr.
Bar #3543[illegible]
6015 Sherman Hare Road
Grantsville, Maryland 21536
1-301/895-5981

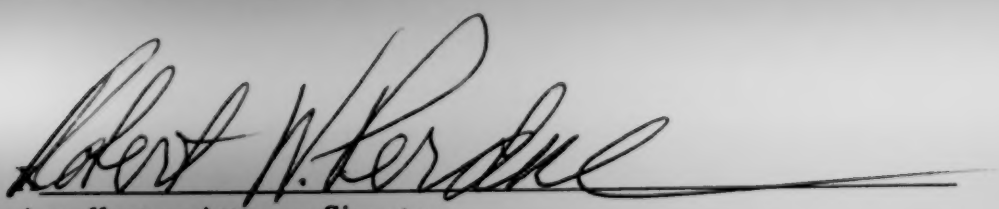
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were mailed, postage prepaid, on this 7th day of July, 1998, to the Appellee's attorneys at the following addresses:

Andrew E. Vernick, Esq.
104 West Street
P.O. Box 551
Annapolis, Maryland 21404
(410) 263-5900
Attorney for Defendant, Hunter

James M. Heffler, Esq.
200-A Monroe Street, Suite 310
Rockville, Maryland 20850
(301) 340-1140
Attorney for Defendant, Meyers

Also five copies of the same to Garland Pinkston, Jr., Clerk of the District of Columbia Court of Appeals, Room 6000, 500 Indiana Avenue, NW, Washington, D.C.



Appellant or Attorney Signature

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1-301/895-5981

Appendix E

WHARTON LEVIN EHRMANTRAUT KLEIN & NASH
ATTORNEYS AT LAW
104 WEST STREET, P.O. BOX 551
ANNAPOLIS, MARYLAND 21404-0551
(410) 263-5900

[Dated: May 28, 1999; Printed on law firm stationary:
Signed by Andrew E. Vernick]

Mr. Robert W. Perdue
Route 2, Box 99-A
Grantsville, MD 21536

RE: PERDUE V. HUNTER, ET AL

Dear Mr. Perdue:

In light of the fact that the time for all avenues of appeal at this juncture have been exhausted, we propose to file this Motion to obtain closure to this case. Please get back to me by June 7, 1999 if you consent to the Motion. If I do not hear from you, I will assume that you do not consent and we will proceed with obtaining a Court Order.

Very truly yours,

Andrew E. Vernick

AEV:rbm
Enclosures

E1

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

Civil No. CA000809-95

ROBERT WILLIAMSON PERDUE
Plaintiff

v.

ALAN A. HUNTER, JR., M.D., et al.
Defendant

MOTION TO DISBURSE PROCEEDS OF SETTLEMENT

The Defendants, Alan A. Hunter, Jr., M.D. and Frederick Myers, M.D., by and through their attorneys, Andrew E. Vernick and Wharton, Levin, Ehrmantraut, Klein & Nash and James Heffler, and Heffler and Uhl, petition this Court to order the disbursal of settlement funds in the above-referenced matter. In support of the foregoing Motion, the Court is addressed to the following

1 . In 1996, Plaintiff Perdue commenced a medical malpractice action against Drs. Hunter and Myers.

2. On the day trial was scheduled to commence in the above-referenced matter. On that date a settlement was effectuated between the Plaintiff and the Defendants

3. Mr. Perdue subsequently attempted to back out of the settlement. He fired his lawyer (Keith Donohoe), filed a Motion to Vacate the settlement and reinstate the case. This Motion was denied. Subsequently, Mr. Perdue, proceeding pro se, filed a Motion for Reconsideration. This Motion was denied. Thereafter, Mr. Perdue filed an appeal with the Court of Appeals for the District of Columbia. An argument was convened and the Court of Appeals affirmed the underlying settlement. Finally, Mr. Perdue filed a Motion for Reconsideration En Banc. This Motion was denied. The time for Mr. Perdue to file any other appeal that he may feel appropriate, even a Writ for Certiorari to the Supreme Court, has come and gone.

4. At the time of the original settlement, a check or draft was provided to Mr. Donohoe as constituting the "lump sum" or up front pay-

ment to Mr. Perdue and his attorney. Because Mr. Perdue attempted to back out of the settlement, he has never executed this draft and obviously it is not negotiable at this juncture. The other part of the settlement was an annuity set up to pay Mr. Perdue a certain amount per month for a designated period of time. Consistent with the annuity agreement, Mr. Perdue has been receiving periodic payments, but he has not cashed a single one of them.

5. The purpose for this Motion is to disburse the proceeds of the settlement so that this case can finally be resolved. It is anticipated that based on Mr. Perdue's past responses that a court order will be required to execute the drafts or in the alternative, that a separate draft be paid to Mr. Perdue's counsel with the remainder submitted in a draft to Mr. Perdue. If Mr. Perdue chooses not to cash his check or deposit it into a bank account, that is his business and it will not adversely affect counsel or the conclusion of this case.

WHEREFORE, the Court is respectfully requested to grant this Motion and thereby either order Mr. Perdue to sign a joint draft with ex-counsel Mr. Donahoe or to allow the insurance carrier to draft separate checks to Mr. Perdue and counsel Donahoe.

Respectfully submitted,

(UNSIGNED)
Andrew E. Vernick, Esquire, No. 367716
Wharton, Levin, Ehrmantraut, Klein & Nash
104 West Street
Annapolis, Maryland 21404
(410) 263-5900

(UNSIGNED)
James Heffler, Esquire
Heffler and Uhl
915 15th Street, Suite 400
Washington, D.C. 20005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ? day of June, 1999, a copy of the foregoing was mailed first class, postage prepaid to:

Robert Williamson Perdue
Route 2, Box 99-A
Grantsville, MD 21536

(UNSIGNED)
Andrew E. Vernick

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

Civil No. CA000809-95

ROBERT WILLIAMSON PERDUE
Plaintiff
V.
ALAN A. HUNTER, JR., M.D., et al.
Defendant

ORDER

Upon consideration of the foregoing Motion, it is hereby ORDERED, that the Motion be, and same hereby is, GRANTED, and it is further,

ORDERED, that Plaintiff Purdue execute, under Order of Court, the settlement draft which constitutes the lump sum or up-front money of the settlement in the above-referenced action.

(UNSIGNED)
JUDGE, Superior Court for the
District of Columbia

Copies To:

Andrew E. Vernick, Esquire
Wharton, Levin, Ehrmantraut, Klein &
Nash
104 West Street
Annapolis, Maryland 21404

James Heffler, Esquire
Heffler and Uhl
915 15th Street, Suite 400
Washington, D.C. 20005

Robert Williamson Perdue
Route 2, Box 99-A
Grantsville, MD 21536

Appendix F

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

Civil No. CA000809-95
Judge Canan
Calendar 9

ROBERT WILLIAMSON PERDUE,
Plaintiff

v.

ALAN A. HUNTER, JR., M.D., et al.
Defendant

[stamp - JUNE 25 1999; unsigned by trial court judge;
Received - JUN 29 1999

MOTION TO DISBURSE PROCEEDS OF SETTLEMENT

The Defendants, Alan A. Hunter, Jr., M.D. and Frederick Myers, M.D., by and through their attorneys, Andrew E. Vernick and Wharton, Levin, Ehrmantraut, Klein & Nash and James Heffler, and Heffler and Uhl, petition this Court to order the disbursal of settlement funds in the above-referenced matter. In support of the foreging Motion, the Court is addressed to the following

1 . In 1996, Plaintiff Perdue commenced a medical malpractice action against Drs. Hunter and Meyers.

2. On the day trial was scheduled to commence in the above referenced matter a settlement was effectuated between the Plaintiff and the Defendants.

3. Mr. Perdue subsequently attempted to back out of the settlement. He fired his lawyer (Keith Donahoe), filed a Motion to Vacate the settlement and reinstate the case. This Motion was denied. Subsequently, Mr. Perdue, proceeding pro se, filed a Motion for Reconsideration. This Motion was denied. Thereafter, Mr. Perdue filed an appeal with the Court of Appeals for the District of Columbia. An argu-

ment was convened and the Court of Appeals affirmed the underlying settlement. Finally, Mr. Perdue filed a Motion for Reconsideration En Banc. This Motion was denied. The time for Mr. Perdue to file any other appeal that he may feel appropriate, even a Writ for Certiorari to the Supreme Court, has come and gone.

4. At the time of the original settlement, a check or draft was provided to Mr. Donahoe constituting the "lump sum" or up front payment to Mr. Perdue and his attorney. Because Mr. Perdue attempted to back out of the settlement, he has never executed this draft and obviously it is not negotiable at this juncture. The other part of the settlement was an annuity set up to pay Mr. Perdue a certain amount per month for a designated period of time. Consistent with the annuity agreement, Mr. Perdue has been receiving periodic payments, but he has not cashed a single one of them.

5. The purpose for this Motion is to disburse the proceeds of the settlement so that this case can finally be resolved. It is anticipated that based on Mr. Perdue's past responses that a court order will be required to execute the drafts or in the alternative, that a separate draft be paid to Mr. Perdue's counsel with the remainder submitted in a draft to Mr. Perdue. If Mr. Perdue chooses not to cash his check or deposit it into a bank account, however, that is his business and it will not adversely affect counsel or the conclusion of this case.

WHEREFORE, the Court is respectfully requested to grant this Motion and thereby either order Mr. Perdue to sign a joint draft with ex-counsel, Mr. Donahoe, or to allow the insurance carrier to draft separate checks to Mr. Perdue and counsel Donahoe.

Respectfully submitted,

Andrew E. Vernick, Esquire, No. 367716
Wharton, Levin, Ehrmantraut, Klein & Nash
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(410) 263-5900

James Heffler, Esguire
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Washington, D.C. 20005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ? day of June, 1999, a copy of the foregoing was mailed first class, postage prepaid to:

Robert Williamson Perdue
Route 2, Box 99-A
Grantsville, MD 21536

Andrew E. Vernick

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

Civil No. CA000809-95
Judge Canan
Calendar 9

ROBERT WILLIAMSON PERDUE,
Plaintiff,

v.

ALAN A. HUNTER, JR., M.D. et al.
Defendent.

ORDER

Upon consideration of the foregoing Motion, it is hereby

ORDERED, that the Motion be, and same hereby is, GRANTED, and it is further,

ORDERED, that Plaintiff Perdue execute, under Order of Court, the settlement draft which constitutes the lump sum or up front money of the settlement in the above-referenced action.

JUDGE, Superior Court for the
District of Columbia

Appendix G

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 95-809
Cal. No. 9 Judge Huvell

ROBERT WILLIAMSON PERDUE,
Plainfiff
vs.
ALAN A. HUNTER, JR., M.D., et al.,
Defendants.

Docketed and mailed: JULY 14 1999: Printed on law firm stationary from Koonz, McKenney, Johnson, DePaolis & Lightfoot
Suite 204 • 6411 Ivy Lane
Greenbelt, MD 20770
(301) 345-5700

ORDER

Upon consideration of Defendant's Motion to Disburse Proceeds of Settlement, the response of Koonz, McKenney, Johnson, DePaolis & Lightfoot and any opposition thereto, it is this 13th day of July, 1999 hereby,

ORDERED, that Defendant's Motion is granted and it is further,

ORDERED, that the National Capitol Reciprocal Insurance Company is hereby ordered to distribute the remaining settlement funds of $275,000.00 to Koonz, McKenney, Johnson, DePaolis & Lightfoot within ten (10) days of the date of this Order.

The Honorable Judge Huvelle

cc:

Keith W. Donahoe, Esquire
6411 Ivy Lane, Suite 204
Greenbet, MD 20770

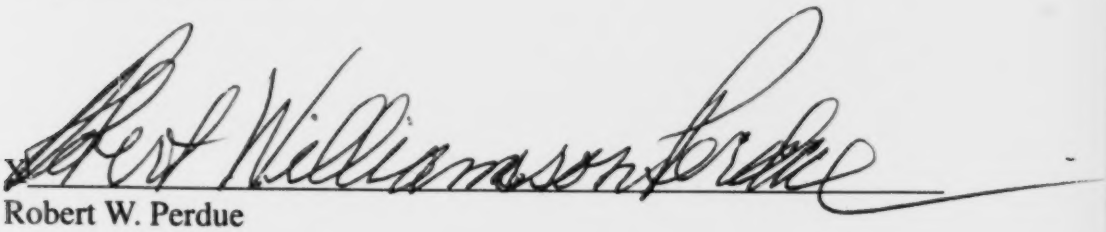
Andrew E. Vernick, Esquire
104 West Street
Suite 551
Annapolis, Maryland 21404
Attorney for Defendant, Hunter

Robert Perdue, Esquire
Route 2, Box 99-A
Grantsville, Maryland 21536

CONCLUSION

The petition for a writ of certiorari should be granted and the case remanded to the Superior Court for a trial by jury in an expeditious manner.

Respectfully submitted,



Robert W. Perdue

Date: Sept. 3, ed. 1999

Supreme Court, U.S.
FILED
OCT 15 1999
OFFICE OF THE CLERK

No. 99-428

IN THE

Supreme Court of the United States

ROBERT WILLIAMSON PERDUE, ESQUIRE,

Petitioner,

v.

ALAN A. HUNTER, JR., M.D. and
FREDERICK MEYERS, M.D.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

RESPONDENTS' BRIEF IN OPPOSITION

ANDREW E. VERNICK
Counsel of Record
MICHAEL K. WIGGINS
WHARTON LEVIN EHRMANTRAUT
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TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Statement of the Case	1
A. The Petition Misrepresents the Underlying Resolution of this Case.	2
Reasons for Denying the Writ	3
Conclusion	8

TABLE OF CITED AUTHORITIES

Page

Cases:

Braun v. Hornstein, 669 A.2d 132 (D.C. App. 1996) 7

Chenault v. W.C. & A.N. Miller Development Company, 184 A.2d 852 (D.C. Mun. App. 1962) 7

Rules:

United States Supreme Court Rule 10 5

United States Supreme Court Rule 14(l)(g)(i) 4, 5

United States Supreme Court Rule 14(4) 3

STATEMENT OF THE CASE

This petition seeks review of a settlement agreement entered into between the Petitioner and the Respondents with respect to a medical negligence action filed in the Superior Court of the District of Columbia. The Petitioner's medical malpractice action was filed on January 22, 1995 alleging that the Respondents were negligent in the medical care and treatment they rendered to the Petitioner and that such negligence proximately caused an ischemic stroke subsequently suffered by the Petitioner. The Respondents filed timely responsive pleadings denying all allegations of negligence.

Following the completion of discovery in the underlying malpractice action, all parties and counsel appeared for trial on February 3, 1997 before the Honorable Russell F. Canan. At the time the trial was to begin in this matter the settlement negotiations which had been ongoing had resulted in a resolution of the Petitioner's claims against each Respondent. The settlement was in the amount of $400,000. At the time the trial was to commence, Mr. Perdue's counsel, Keith Donahoe, Esquire, announced that a settlement had been reached. Mr. Perdue's counsel announced the amount of the settlement, the Court inquired of the settlement, the Court approved the settlement and the Petitioner's claims were dismissed. The resolution of the Petitioner's claims was agreed to by the Petitioner as evidence by his signature upon a Praecipe of settlement/dismissal. Almost two months after the February 3, 1997 settlement agreement the Petitioner, acting pro se, filed a one-page motion with the trial court to vacate the settlement and dismissal and to reinstate the case. The trial court denied the Petitioner's Motion on May 22, 1997. The Petitioner filed an appeal to the District of

Columbia Court of Appeals on June 18, 1997. The District of Columbia Court of Appeals affirmed the trial court's denial of the Petitioner's Motion to Vacate Settlement and Dismissal on January 21, 1999 in a Memorandum Opinion and Judgment. The Petitioner first filed a petition for writ of certiorari in this Court on July 7, 1999. The Clerk rejected the Petitioner's filings for non-compliance with the rules and directed the Petitioner to refile his petition on or before September 9, 1999. A refiled petition was docketed by the Court on September 15, 1999.

As detailed below, there is no cause for this Court's review of the Petitioner's contentions which have now been rejected by the District of Columbia Court of Appeals. Additionally, the Petitioner's broad sweeping and conclusory allegations of lack of judicial procedures within the District of Columbia are unsupported.

A. The Petition Misrepresents the Underlying Resolution of this Case.

In furtherance of his contention that a procedural irregularity rampant within the Courts of the District of Columbia resulted in the improper administration of justice, the Petitioner asks this Court to protect Petitioner from his own acts. Contrary to the assertions contained in the petition, the Petitioner's medical malpractice action was resolved with not only the Petitioner's express approval but the approval of the trial court. In the Petitioner's underlying malpractice action the dialog between the Court and the parties could not have been more clear in this regard. The dialog between the Court and the parties culminated in the signing of a Praecipe of Settlement and Dismissal — most notably signed by the Petitioner herein. Thus, contrary to the bald allegations

in the petition, the Petitioner was in agreement, at the time, with the resolution reach in the underlying malpractice action. Petitioner should not now be permitted to burden this Court with Petitioner's unsupported contentions which can only be characterized as an attempt to renege on his previous decision to settle his claim.

REASONS FOR DENYING THE WRIT

The Petitioner claims that the District of Columbia Courts' lack of judicial procedures has somehow harmed him does not warrant review by this Court. The decision below represented a plainly correct application of settled law involving no conflict among any Federal Circuit and no important issue of Federal law. The bald assertion that the District of Columbia Courts lack judicial procedures is wholly unsupported as demonstrated, most appropriately, by the facts of this case.

1. The writ should be denied because of three glaring procedural failures. First, the petition filed herein was due to be filed on or before the 9th day of September, 1999 as noted in the Court's record and as the Petitioner was advised by correspondence from this Court on July 9, 1999. The petition was not docketed until September 15, 1999. Second, Rule 14(4) requires the Petitioner to state with accuracy, brevity and clarity whatever is essential to ready and adequate understanding of the points requiring consideration. The Petitioner herein failed to do so, rather, Petitioner presents an overabundance of irrelevant and extraneous material and fails to support his assertion of lack of judicial procedures with any precedent describing judicial procedures over and above those practiced in the District of Columbia which the Petitioner imposes upon the District of Columbia Courts.

Finally, Sup. Ct. R. 14(l)(g)(i) imposes upon the petitioner the obligation to have made a record in the proceeding below of the specific Federal question implicated in the present petition. The Rule states:

> (g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:
>
> > (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

The petitioner failed to raise any Federal question in the proceedings below and is, therefore, unable to meet the requirements of Rule 14(l)(g)(i). Absent an identification of the stage in the proceedings below when the Federal question sought to be reviewed was raised, the Court should decline to accept the petition.

2. The Writ should be denied because it is substantively devoid of the compelling reasons necessary for this Court to exercise its judicial discretion. Sup. Ct. R. 10 outlines the considerations governing review on certiorari. Rule 10 underscores the compelling reasons which must exist for the Court to grant the writ. The Rule also outlines the character of the reasons the Court considers. These reasons include:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States Court of appeal on the same important matter; has decided an important Federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctions such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
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> (b) a state court a last resort has decided an important Federal question in away that conflicts with the decision of another state court of last resort of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of Federal law that has not been, but should be, settled by this

> Court, or has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

The Rule also provides that a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Nowhere in the petition does the Petitioner outline the conflict among the United States courts of appeal which are implicated in this matter. Likewise, the Petitioner does not contend that any important Federal question is involved in his petition. The petition, at best, involves an erroneous factual finding or a misapplication of a properly stated rule of law — precisely the type of petition which this Court appropriately declines to accept.

The review sought herein involves the settlement and dismissal of the Petitioner's medical malpractice action where the Petitioner's counsel announced the settlement in open court and where the Petitioner herein executed a Praecipe stipulating to the dismissal and settlement of his claim. In fact, the Petitioner was present when his counsel announced that a settlement had been reached in the amount of $400,000 and Petitioner voiced no objection to the settlement, nor did he make any statement indicating anything other than acceptance of the resolution. Thereafter, a valid and binding Praecipe of Dismissal and Settlement was executed by all counsel and the Petitioner. The Trial court refused to vacate the praecipe of dismissal. The District of Columbia Court of Appeals affirmed the Trial court's conclusion that a settlement had been reached and agreed to by the Petitioner.

The resolution of this matter by the trial court and the District of Columbia Court of Appeals is in accordance with the long-standing law in the District of Columbia that a release signed by a party may not be avoided on the basis of fraud, misrepresentation or the bad advice of counsel. *Chenault v. W.C. & A.N. Miller Development Company*, 184 A.2d 852 (D.C. Mun. App. 1962). The District of Columbia Courts view a settlement agreement as a contract or executory accord between the parties and "the law favors settlement of controversies and a compromise agreement will be enforced just like any other contract." *Braun v. Hornstein*, 669 A.2d 132, 142 (D.C. App. 1996). Under the law of the District of Columbia settlement agreements such as this one where each party is represented by counsel should be giving great deference. Furthermore, where the parties are represented by counsel and where the Court approves the settlement there can be little room for doubt that appropriate safeguards exist to protect the interests of the parties under our adversarial system. Finally, where a settlement between represented parties is approved by the Court and the document to effect the settlement and dismissal of the claim is signed by the parties the agreement should, and must, be enforced.

At each level of the Petitioner's proceedings in the courts of the District of Columbia, his claims and contentions were evaluated. The trial court patiently entertained the Petitioner's requests to reinstate this case. The District of Columbia Court of Appeals considered the Petitioner's claims, permitted oral argument on appeal and issued a Memorandum Opinion finding that a settlement had in fact been reached which, under the law of the District of Columbia, should be enforced as to the rights and obligations of each party. Under these facts it cannot be said that the District of Columbia lacks judicial procedures to monitor a private party's voluntary settlement of his civil suit.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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